



**THE  
MUSCOGEE (CREEK) NATION**

Historic and Cultural Preservation Department  
PO Box 580 | Okmulgee, OK 74447  
T 918.732-7733 | F 918.758-0649

**JAMES R. FLOYD**  
PRINCIPAL CHIEF  
**LOUIS A. HICKS**  
SECOND CHIEF

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Ex Parte Filing

Secretary Marlene Dortch  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**RE: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79**

**Wireless Infrastructure Streamlining Report and Order (Second Report and Order),  
WT Docket No. 17-79**

Dear Chairman Pai and Members of the Commission:

The Muscogee (Creek) Nation respectfully submits the following comments in response to the Draft Second Report and Order released on March 1<sup>st</sup>, 2018, and the above referenced Federal Communications Commission (FCC) notices.

The Muscogee (Creek) Nation agrees and supports the acceleration of wireless broadband deployment and wants to work as partners in preserving not only our Tribal history but American history. This partnership is part of the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions. Specific responsibilities and obligations of the FCC are to consider, plan for, protect, and enhance historic properties and cultural resources that may be affected by FCC undertakings, pursuant to not only the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) but several other federal preservation laws including the Archaeological Resources Protection Act (ARPA), the Native American Graves Protection and Repatriation Act (NAGPRA), the Historic Sites Act of 1935, the Antiquities Act, the American Indian Religious Freedom Act, the Religious Freedom Restoration Act, Executive Order (EO) 13007 ("Indian Sacred Sites"), EO 13287 ("Preserve America"), and EO 13175 ("Consultation and Coordination with Indian Tribal Governments"). The Draft Second Report and Order has implications that would undermine Tribal authority and rights to protect our cultural resources and we urge the FCC not to move forward with its adoption.

The Muscogee (Creek) Nation does not agree that the FCC has fulfilled its requirements under 36 CFR Part 800.2 (c) (2) (ii) of the NHPA for Tribal Consultation. The FCC's comments on Section II- part B, 'Tribal Consultation Process', Paragraphs 16-32 in the Draft Second Report are incorrect characterizations of the tribal meetings the Muscogee (Creek) Nation attended. The tribal meetings did not constitute government-to-government consultation because we were not given reasonable notice to participate or travel to the meetings and our tribal leadership was not invited to attend. The meetings we attended were informal meetings and seemed to be a listening session rather than a discussion of proposed changes or what the Muscogee (Creek) Nation constitutes as consultation.



The regional meeting our tribe was able to attend in Broken Arrow, OK on July 24, 2017 was unproductive and tribes were frustrated that FCC staff were not taking meeting minutes, recording, or making our comments part of the record. The meeting had no agenda or format, only a sign-in sheet and was held in a room that was too small to accommodate proper seating for all tribal representatives present. We requested a one on one meeting with the FCC at the Broken Arrow meeting immediately after we received notice that FCC would be holding this meeting on June 25, 2017. We did not receive confirmation that our one-on-one meeting would be granted until July 23, 2017, 28 days after our initial request and the day before the Broken Arrow meeting. This meeting was the closest to our Tribal nation and would have been the best time for our Principal Chief to meet with FCC but due to the lack of communication by the FCC we were not able to confirm the one-on-one meeting for our Chief to attend.

At the National Association of Tribal Historic Preservation Officers (NATHPO) conference in Pala, California, the FCC held a meeting to address issues associated with the deployment of wireless technologies and the NRPM. The Muscogee (Creek) Nation attended this meeting and we were assured that the meeting was not considered government-to-government consultation and was only an informational meeting. Several issues were discussed at this meeting and we will highlight them here as well. The FCC's approach to removing barriers to wireless infrastructure deployment is industry driven and portrays Tribes in a negative light. Tribes lack confidence in FCC to come to the table with industry and support the Tribes in our comments. Tribes want to meet directly with industry and FCC to further discuss tribal review.

We also attended the October 4, 2017 meeting with Chairman Pai in Washington, DC. This meeting was a good meeting and we appreciate the Chairman being willing to meet with us. We presented our comments on the NRPM and Chairman Pai was respectful and responsive to the issues we discussed. He did however focus on the FCC's efforts to bring wireless infrastructure to rural communities that would expand access to emergency service towers. We also agree that broadband access is needed in rural communities but small cells are not being deployed in rural areas, they are being deployed in large cities like Atlanta and Miami. Rural communities will not benefit from the proposed changes in the Draft Second Report and Order.

On January 22 and 24, 2018 the Muscogee (Creek) Nation participated on the FCC Conference Calls. As mentioned in the Second Report and Order, the calls were not viewed as meaningful consultation to the tribes. The FCC has falsely included the Muscogee (Creek) Nation in attendance at two other meetings listed in Section II- part B, Paragraph 26 and 29, in the Draft Second Report and Order. We did not attend these meetings. The FCC misrepresented this information in its attempts to verify tribal consultation. It is important that the FCC communicate and present accurate information.

The FCC staff did not mention anything about the FCC's proposed amendments to the definition of 'federal undertaking', modifications to up-front tribal consultant fees, changes to large and small wireless infrastructure review, or shorting the time for tribes to review projects at any of the meetings or conference calls we participated in. Tribal consultation on the Second Rule and Order has not occurred and the Commission should not be meeting to decide on the proposed procedures without proper consultation, at minimum allowing tribes to provide comments within a 30-day review time period. Effective and meaningful government-to-government consultation requires more than informal, staff-level meetings that FCC facilitated. The Muscogee (Creek) Nation requires adequate and advanced notification about the meeting, an agenda that is developed with consulting parties, meeting minutes or transcript that is on the record and confidential, and the meeting is sensitive to tribal sovereignty. The Broken Arrow meeting, the NATHPO summit, the Washington, DC meeting, and the conference calls did not constitute government-to-government consultation to the Muscogee (Creek) Nation.



It is the responsibility of the FCC and Industry to work with Tribal Nations who are charging exorbitant fees to remedy the situation. We do not support changing policy in reaction to a small number of Tribal Nations, for the detriment of all Tribal Nations. Adopting new regulations for all Tribes would be a harmful precedent and would interfere with the FCC's trust responsibility to work in the best interest of all Tribal Nations.

Tribes possess unique expertise in identifying traditional cultural properties, view sheds, landscapes, and sacred places and that determination can never be made solely by an archaeological consultant in the place of a tribe for small cells, large macro towers, or colocations. We will not negotiate our right to protect our cultural resources through the section 106 review process or allow FCC to dictate what information we need to complete a review (paragraph 99). We strive to hold on to every piece of culture we have left, and one of the ways we do that is to preserve and protect the cultural resources in our current and aboriginal homelands. The Muscogee (Creek) Nation strongly opposes revisions that would allow applicants to self-certify Section 106 compliance. This would violate our rights under the National Historic Preservation Act. The FCC should acknowledge that Tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to us as provided in 36 CFR § 800.4(c)(4). The Commission has a trust responsibility between the federal government and Tribal Nations, not with industry. Industry should not be allowed to dictate what qualifies as a Muscogee cultural resource or if our tribal citizens are qualified to assess eligibility of archaeological or cultural sites. If FCC changes the tribal roles in the 106 process, we will choose the alternative option, in which we will demand direct consultations with the FCC on potentially hundreds of larger tower sites and avoid the streamlined tribal-industry process we currently use.

The Draft Report and Order does not reflect the trust responsibility and diminishes the Muscogee (Creek) Nation's ability to protect our cultural and historic properties. We do not support changes to small wireless facilities to be exempt from 106 reviews, they do qualify as an "undertaking", and NHPA and NEPA should apply. We do not support the elimination of upfront tribal fees for initial historic preservation assessments by tribal governments. We do not support industry to exclusively rely on its own consultants who have limited understanding of Muscogee culture. The protection and preservation of our cultural resources is one of the most important responsibilities we have as a Nation. Our cultural resources are irreplaceable and they are a part of who we are as Muscogee people. We ask that all Commissioners vote against adopting this Draft Report and Order.

Mvto,

A handwritten signature in cursive script that reads "RaeLynn Butler".

RaeLynn Butler  
Muscogee (Creek) Nation  
Historic and Cultural Preservation Manager